

P28845.A06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Thomas SCHERB et al.	Confirmation No: 9642
Appln. No.	: 10/560,074	Group Art Unit: 1791
I.A. Filed	: June 9, 2004	Examiner: Jose A. Fortuna
For	: METHOD AND DEVICE FOR PRODUCING A WEB OF TISSUE	

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

In response to the Examiner's restriction requirement of February 12, 2009, the time set for response being 30 days, i.e., March 16, 2009 (March 14, 2009 being a Saturday), Applicant hereby elects with traverse the invention defined by the Examiner as Group II (claims 224-274), and the Species directed to "Formers", of which at least claims 224-226, 228-236, 238-259 and 261-274 are readable thereon. Applicant notes that the Examiner has acknowledged that at least claim 224 is generic to Group II, but neglected to acknowledge that at least claim 274 is also generic. The above-noted election is made with traverse for the reasons set forth below.

REMARKS

Upon entry of the present election, Applicant will have elected with traverse the invention defined by the Examiner as Group II, and the Species "Former", of which at least claims at least

claims 224-226, 228-236, 238-259 and 261-274 are readable thereon.

In the restriction and election requirement, the Examiner set forth a requirement to restrict the claimed invention to one of two Groups and to one of five allegedly distinct species.

Applicant respectfully traverses the basis for restriction and election. Applicant emphasizes that the Examiner did not properly apply the Unity of Invention standard pursuant to PCT Rule 13.1. While the Examiner consider the claims under the “special technical feature” standard, the Examiner neglected to consider all of the claim features of each group.

The standard, as described clearly in M.P.E.P. sections 1850 and 1893.03(d), is whether the groups can be read to have a common technical relationship, i.e., whether a special technical feature is common to the groups. Accordingly, if each of the groups can be read to have one or more common special technical features or relationships, then they simply cannot be restricted.

In this case, the technical relationship or technical features common to all of the claims are at least the features recited in the claims which correspond to the claims that were not rejected in the Search Report, i.e., the line force (see claims 169 and 230). Thus, Groups I and II have in common at least the special technical feature recited in these claims. Applicant also emphasizes that each of the features noted in the species groups have in common at least each of the features which are not part of the designated species including the line force of, e.g., claim 230. Thus, it is submitted that the Examiner has disregarded the claim language in an attempt to support the restriction requirement that is otherwise clearly improper under PCT Rules 13.1 and 13.2.

Accordingly, Applicant submits that under the “unity of invention” standard, the Examiner

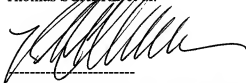
has set forth an improper basis for restricting the invention to any of the groups or species.

For all these reasons, and consistent with the office policy as set forth in M.P.E.P. §§ 803, 1850 and 1893.03(d), Applicant respectfully requests that the Examiner reconsider the position taken in the above-mentioned Official Action and withdraw the election requirement in the present application. Accordingly, the Examiner's restriction requirement is believed to be entirely improper and inconsistent with current USPTO guidelines, and has been traversed for the reasons set forth above.

Nevertheless, in order to be fully responsive, Applicant has elected with traverse the invention defined by the Examiner as Group II, and the Species "Former", of which at least claims at least claims 224-226, 228-236, 238-259 and 261-274 are readable thereon.

Authorization is hereby given to charge any fees necessary for consideration of this paper to deposit account 19-0089.

Respectfully submitted,
Thomas SCHERB et al.



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